

Labor Management Relations Quarterly Meeting

Washington, D.C.

May 20-21, 1997

Participants:

MANAGEMENT

Ron Thompson

Joe Chapin

Regina Sullivan

Jim Foley

Carol Hummel

Susan Marlo

Marcia Murray

Julie Price

UNION

Charlotte Bowden

Ron Melton

Phil Glover

Manny Borquez

Earl Elliott

Freddy Hernandez

Dennis Biesik

Subject Matter Experts:

Jeff Barnes

Jim Hyland

Dan Joslin

Karen Fowler

Dave Good

Policy Negotiations

Significant Agreements

[detailed minutes contained in a separate document]

Merit Promotion Plan

(P.S. 3000.02, Section 335.1):

- ◆ Management and the Union agreed to change Section 16(c) on “Expiration of Promotion Certificates” to read:

“A promotion certificate is valid for ninety days after the date the promotion board is held.”

- ◆ Management and the Union agreed to change Attachment 3-12 to credit each QSI or SSP with four points.
- ◆ Management agreed to issue an EMS to the field encouraging supervisors to take advantage of their opportunities for nominating employees for letters of commendation.
- ◆ Management agreed to address in the EMS the union's concerns regarding oral status reports on promotion boards and to encourage human resource managers to provide a written report to the union upon request.
- ◆ Management agreed to fax a copy of the EMS's resulting from this meeting and future national LMR meetings to all Executive Board members of the Council of Prison Locals.

Presentation

The union presented a videotape from the Michigan state corrections department in support of their correctional workers. The union indicated that they were considering developing a similar promotional video to promote the challenging work performed by correctional workers in the Bureau.

Other Agenda Items

Issue: **Fair Labor Standards Act (FLSA)**

Discussion: Mr. Glover initiated a discussion regarding bargaining unit positions which have been exempted from FLSA coverage. He explained that, recently, after a denial of overtime pay for a welder at FCI Loretto, the union became concerned that institutions are listing unit employees as being exempted from the FLSA. After reviewing several guidelines, Mr. Glover determined that many may have been exempted improperly. He provided a list of these positions to the management representatives.

Ms. Fowler responded that exemption from the bargaining unit is based on different criteria than exemption from the FLSA; employees are not automatically considered nonexempt under the FLSA simply because they are members of the bargaining unit. She stated that criteria are clearly established in the law that should be followed in making the determination as to whether a position should be exempt or nonexempt under the FLSA, and she explained these criteria. She then explained that the Bureau has no standardized listing matching positions with their exemption status. This determination should be made locally for most of the GS positions identified by the union; these positions are classified and keyed at the local level, and exemption determinations are made as part of the classification process based upon the duties described in the position description.

Mr. Joslin and Mr. Barnes explained that WL and WG employees should be nonexempt. The discussion then turned to WS employees. The management representatives stated that, due to the complexity involved in determining the exemption status of these positions, they contacted the Department of Justice for an advisory opinion and had yet to receive it; they requested to defer a response until a definitive answer is obtained.

Action: Management will report to the union regarding the DOJ response on WS positions after said response is received. Moreover, within approximately sixty days, management will make exemption status determinations for those positions which are covered by a standardized position description and will provide this information to the union and answer any questions. Finally, management will find-out where WG and WL employees are exempt and contact those institutions to ensure that these positions are given nonexempt status.

Issue: **Pay Cap**

Discussion: The Union requested a discussion of pay cap issues. Ms. Fowler responded that, as a result of the Federal Employees' Pay Comparability Act (FEPCA) implemented in November of 1990, law enforcement overtime rates improved to the greater of one and one-half times the hourly rate of a GS-10, step 1 or the hourly rate of basic pay of the employee. The maximum overtime rate was not raised to the GS-15, step 1 level. Employees have been paid at the correct overtime rates established by FEPCA since November of 1990. Also as a result of FEPCA's implementation, a special maximum biweekly earnings limitation for law enforcement officers was established. The biweekly limit was established at the lesser of one hundred and fifty percent of a GS-15, step 1 or Level V of the Executive Schedule. However, this biweekly limit on overtime does not apply to employees covered by the FLSA.

Ms. Fowler further explained that the problems regarding FLSA overtime payments came about as a result of regulatory changes issued by OPM in January of 1993 to implement Section 210 of FEPCA. These regulatory changes affected the number of hours worked before overtime pay entitlements became effective and had no bearing on the hourly overtime rate. Upon conversion to the National Finance Center (NFC) payroll system in April of 1993, the NFC failed to institute these regulatory changes. As a result, some employees may have been underpaid for overtime worked after that time. These pay discrepancies came to the agency's attention in April of 1994. DOJ was notified and worked with the NFC to correct the system problems for several months. In March of 1995, the regulatory changes were implemented and the NFC corrected the system to properly compute overtime pay entitlements. Not all employees at the seven, eight, and nine grade levels were incorrectly compensated for overtime, only those nonexempt employees whose overtime rate exceeded one and one-half times the hourly rate of a GS-10, step 1 (i.e., GS-7, steps 9 and 10, GS-8, steps 7-10, and GS-9, steps 5-10). Historical reports are currently being generated to determine the pay discrepancies and which employees are due backpay, but DOJ has indicated that it will take several months before these reports are issued due to the number of employees affected at other DOJ components.

Action: A notice explaining this issue has been drafted and will be issued to all employees. [Ms. Sullivan brought the draft to the meeting for the union's review. The union representatives indicated that they were generally satisfied with the information provided therein; however, it is understood that once this notice is posted, the union is within its rights to dispute some of the explanation.]

Issue: Early Dismissal

Discussion: Mr. Borquez raised the issue of early dismissal during the holiday season. He stated that noncritical employees have been allowed to leave early while others are required to remain at work without equitable credit for those hours. Mr. Glover suggested that those required to remain be granted administrative leave at a later time.

According to the management representatives, the directive to leave early was issued by the Attorney General during the Christmas and New Years holidays. The directive authorized that "employees not performing emergency or essential functions may be released at 2:00 p.m. local time." The union responded that the Bureau should have modified the directive to meet the specific needs of the BOP, allowing the field some

discretion to make the early dismissal policy more fair. The management team responded that, unfortunately, the only way to make the policy more equitable might be to disallow early dismissal for all employees.

Action: The management representatives will consider this issue further.

Issue: **Performance Standards**

Discussion: Mr. Borquez requested a discussion of the provision in the performance standards regarding employees in “acting” supervisory positions. He stated that this provision appears in element #4 for correctional officers and is in the standards for psychologists as well. The union asserted that employees should not be rated on this criteria. The management representatives responded that the correctional officer standards have included the acting responsibilities since 1991, while the psychologist standards have never addressed this responsibility. Ms. Sullivan further explained that the acting responsibilities appear only in the element definition and are not linked to any particular adjective rating. However, according to the union, some correctional supervisors are requiring the performance of acting duties for the granting of particular ratings.

Action: The EMS will include a statement that acting responsibilities are not essential for the granting of any particular adjective rating.

Issue: **Failure to Bargain**

Discussion: Mr. Glover raised the issue of the failure of some local management officials to bargain over changes in working conditions. Mr. Chapin responded that management officials are instructed regarding their bargaining obligations during their requisite training. Mr. Glover requested the specific inclusion of this topic on the training agenda, and Mr. Chapin informed him that it is already in the LMR lesson plan.

Action: Mr. Chapin ensured the union that he will continue to advise management officials in training sessions, including Wardens’ and Associate Wardens’ meetings, regarding their bargaining obligations and will include reference to the specific procedures which should be followed.

Issue: **Two Percent Budget Cut**

Discussion: Mr. Glover and Mr. Biesik expressed their concerns that institutions are holding positions vacant due to the two percent budget cut imposed on all regions, raising important safety issues. The union representatives elaborated on their concerns over vacating posts, which they perceive as an increasingly frequent practice. Ms. Hummel responded that, as discussed at the last national LMR meeting, this cut is a goal which was developed by the Executive Staff of the Bureau to address the problem of rising per capita costs; it constitutes an effort to slow the rate of this rise. This effort is of particular importance in light of the fact that some correctional agencies have lower per capita costs than the Bureau does at present. Moreover, as Mr. Thompson stated, the Bureau needs to be in an optimal position to compete with private corrections systems which are promising low per capita costs. The two percent cut is not a mandate but a goal and is expected to result from the normal course of business in each region, as it has in the past. Mr. Thompson emphasized the fact that safety and security are not to be compromised in an effort to achieve this goal. The union representatives responded that, if the goal is to compete with private corrections, they propose that a meeting be held between the Executive Staff of the Bureau and the Executive Board of the Council of Prison Locals to discuss cutting per capita costs.

Issue: **Foreign Medical Graduates**

Discussion: Mr. Elliott articulated the union's concerns regarding an alleged announcement of a hiring freeze on foreign medical graduates as Physician Assistants, including a grandfather consideration for incumbents, focusing upon their concern that management at some institutions is attempting to terminate these incumbents. Dave Good responded that the concept of a hiring freeze on foreign medical graduates does not appear in any written policy. Rather, it is a verbal suggestion made by the Bureau's Medical Director based on current community standards (i.e., the private sector does not recognize foreign medical graduates as Physician Assistants). Thus, if a choice exists between a licensed certified individual and an equally qualified foreign medical graduate, the institution is encouraged to select the former applicant. Mr. Good further stated that, at some time in the future, a court may impose such a hiring ban on the Bureau as the result of a medical malpractice suit filed by an inmate. Moreover, in response to the union's concerns, the management team assured them that the Bureau is not targeting its incumbent foreign medical graduates, which constitute upwards of seventy percent of the Bureau's Physician Assistants.

Action: The concerns discussed regarding the hiring of licensed certified individuals over equally qualified foreign medical graduates will be reiterated in writing in the EMS which results from this meeting.

Issue: **Institution Visits by Members of Congress**

Discussion: Mr. Glover explained that the American Federation of Government Employees and the Council of Prison Locals are encouraging local union officials to invite members of Congress to their facilities in order to communicate their concerns to local policymakers. He expressed the union's concerns that local management officials at some institutions are resistant to this practice. Mr. Chapin responded that he understood the union's concerns, but suggested that this resistance may be due to the short notice often given to Wardens regarding these visits. Mr. Thompson also mentioned that some invited legislators may not be sympathetic to the mission of the Bureau. Moreover, he suggested that local management officials may have legitimate concerns that the positions presented to these politicians by the union may be in opposition to management's concerns. Mr. Glover agreed that the union may at times possess a viewpoint in opposition to management. However, the union still has the legitimate right to express its views and the views of the bargaining unit to members of Congress. Further, Mr. Glover expressed the union's concern that management will "take over" the visit.

Action: The Council of Prison Locals will advise local union officials that, when planning an institution visit by a member of Congress, they should notify the Warden as soon as possible and coordinate the visit.

Issue: **Taft**

Discussion: The union requested a discussion on Taft. Mr. Chapin stated that the Council President had requested to wait until after a contractor is selected to negotiate any issue relating to Taft. This selection should be announced in June or July of this year. Mr. Chapin also mentioned that Steve Schwalb has already met with many union officials regarding the reasons for including a Unicor operation at Taft. Mr. Borquez then requested a reiteration of those reasons. In response, Mr. Chapin explained that the 1997 appropriation directed the privatization of Taft as a five year pilot, and mandated a fair test for this institution in comparison to BOP-operated facilities. To achieve this fair comparison, it is necessary to operationally design Taft to include all of the benefits available to BOP

institutions. The Bureau must ensure that it does not undermine the success of Taft nor provide any advantages beyond what is typical of BOP operations. Since the Bureau considers Unicor to be its most important program to safely and successfully manage its institutions, it is an obvious choice to include this program in the Taft pilot. To do otherwise could lead to idleness and management problems or require the contractor to incur huge costs in replicating this type of program.

The union representatives indicated that they continue to oppose this idea and, after review of the budget and final appropriations language, do not believe that the Bureau has to support the private company with the Bureau's inmate program. In addition, Mr. Glover articulated the union's interest in ensuring that bargaining unit employees at Taft are adequately represented.

Issue: **Policy Update**

Discussion: Mr. Glover requested an update on the status of the policy revisions which were negotiated at the national LMR meeting held in August of 1996. Ms. Marlo responded with the following information:

P.S. 1210.11 (Internal Affairs, Office of) - The clearance statement is being reviewed by the Office of General Counsel prior to the policy being forwarded to National Policy Review for the Director's signature.

P.S. 3410.98 (Standards of Employee Conduct) - The Change Notice was published on April 23, 1997.

P.S. 3735.03 (Drug Free Workplace) - The policy has been returned to the Health Services Division for the clarification of issues resulting from the clearance process.

P.S. 3730.04 (Workplace Violence Prevention) - This policy was published on March 17, 1997.

The other revisions resulting from the negotiations were already issued, as indicated in correspondence sent to the Council President this past March.

Action: The union may access such policy information independently via BOPDOCS.

Issue: **VRA Appointments**

Discussion: Mr. Glover raised an issue involving VRA appointments. Specifically, he stated that two VRA-appointed employees have been terminated in the Northeast region recently for “failure to perform duties,” one of whom had an exceeds rating (the other had a fully successful rating). Ms. Murray responded that both employees were serving their two year probationary period at the time of their respective terminations. She explained that this probationary period is specifically intended to monitor and measure an employee's qualifications, performance, and suitability for work. Accordingly, the agency properly exercises its right in removing employees who fail to attain the expected levels of performance or conduct. Furthermore, these employees have appeal procedures available to them and may exercise those rights if they choose to do so. The management representatives further indicated that, absent releases from these employees, they were not in a position to discuss the specifics of their cases.

The union representatives reiterated their assertion that, if a probationary employee receives fully successful or exceeds ratings throughout the year, it is difficult to understand how his/her performance could ultimately be deemed deficient.

Issue: **Unit Management Manual**

Discussion: Mr. Glover indicated that it has come to the union's attention that the draft of the Unit Management Manual has been sent to the field with instructions to implement the “two late nights” concept. Mr. Foley responded that the Unit Management Manual is being revised and that some sections have been sent to the regional administrators for their comments. However, this is not a formal publication. The manual in its entirety has not been completed; it is still in its draft stages. No changes have been implemented as of yet, and some changes will require Executive Staff approval.

Mr. Hernandez provided examples of institutions which have already adopted the “two late nights” schedule, and he suggested that this change is being filtered-out to the field incrementally and implemented institution-by-institution. The union expressed concern with this perceived deviation from the appropriate policy negotiation/implementation process.

Action: The officials responsible for the Unit Management Manual will be contacted by the management representatives and informed of the union's concerns over

implementing changes without providing the union at the appropriate level the opportunity to bargain over its impact on the unit.

Issue: Central Office Transfers

Discussion: Mr. Chapin requested clarification on the procedures to be employed when a union member transfers from the Central Office to a field location. Because the Central Office is not governed by the Master Agreement provisions for dues transfer, such employee transfers create problems for those trying to transfer their dues deductions to the new local.

Action: The union will investigate this issue and respond to management in writing.

Issue: Trustees

Discussion: Mr. Chapin described a problem which is occurring at locals operating under trusteeships. Specifically, when employees attempt to withdraw from the union or contact the trustees for other purposes, they have difficulty locating them.

Action: The union will investigate this issue and respond to management in writing.

Issue: Polyester Uniforms

Discussion: FCI Pekin submitted an item for the agenda regarding the fiber content of uniform pants. Specifically, the union there is concerned over discomfort caused by the polyester material.

Action: Mr. Chapin will refer this issue to the Staff Uniform Committee for resolution.

Issue: Roster Procedures

Discussion: Mr. Glover expressed concern that some institutions are identifying “critical posts” in an apparent effort to circumvent the appropriate roster procedures. He provided several documents to the management team in support of his contention.

Action: Mr. Chapin will discuss this issue with the Assistant Director of Correctional Programs and his staff.